THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.6230 OF 1994

O R D E R

Heard both the counsel.

2. The writ petition is filed for a writ of mandamus declaring the recovery proceedings initiated by the respondents under the A. P. Revenue Recovery Act (for short 'the Act') and various notices issued thereunder, particularly form 5 Section 27 notice of attachment and form7-A notice of sale, as arbitrary, illegal and without jurisdiction.

3. The case of the petitioner in the affidavit filed in support of the writ petition is that he is a permanent resident of Kodad in Nalgonda District and the 3rd respondent – District Manager, A. P. State Civil Supplies Corporation Limited, Nalgonda District appointed him as sugar commission agent for Kodad taluk and by proceedings dated 23.11.1981 he was also appointed as taluq stockiest for handling of levy rice, and wheat stocks allotted by the Collector (Civil Supplies). The petitioner paid the necessary security deposit. As per the public distribution scheme, the petitioner was required to store the commodities, viz., sugar, wheat, rice, fertilizers and cement in go-downs and release the same to the fair price shop dealers and other licensed dealers as per the order of the Mandal Revenue Officer and the fair price shop dealers are required to pay the value of the goods lifted by them, by way of account payee orders drawn in favour of A. P. State Civil Supplies Corporation Limited and as such the petitioner had nothing to do with the actual cash transactions and he was paid commission of Re.1-25 paise per quintal of rice and Rs.2-25 paise per quintal of sugar and wheat. It is stated that no wheat was supplied. It is alleged that though the petitioner submitted resignation in the month of August, 1984, he was asked to continue and accordingly he continued up to February, 1985. It is stated that during the tenure of the petitioner there were no complaints from the general public or the card holders. The petitioner submitted the registers and the same were accepted by the respondents. After a lapse of seven years, the 5th respondent issued memo No.C.S.No.E/2880/90 dated 27.1.1992 alleging

that a sum of Rs.4,44,806-48 ps. was due from the petitioner on account of certain alleged corrupt practices. It is stated that no particulars were given with regard to alleged corrupt practices. The petitioner denied that he was warned twice. The petitioner was not given any show cause notice. It is alleged that without conducting any enquiry or issuing any show cause notice, the liability was fixed. The petitioner was served with a demand notice directing to pay the amount within three days and pursuant thereto, the petitioner made a representation on 18.2.1992 stating that he was not having any stock of any commodity and that he may be furnished with the necessary registers on the basis of which liability is fixed. The grievance of the petitioner is that without conducting any enquiry, the 5th respondent – Mandal Revenue Officer, straight away issued notice of attachment under Section 27 of the Act, on 3.2.1994, which was received by the petitioner on 29.3.1994, fixing the date of sale on 7.4.1994. Complaining that the respondents fixed the liability and issued notices under the Act for sale of house property in violation of principles of natural justice, the present writ petition is filed.

3. The 3rd respondent – District Manager, Andhra Pradesh State Civil Supplies Corporation filed counter affidavit and denied the allegations of the petitioner with regard to violation of the principles of natural justice. It is stated that the writ petition is bad for delay and latches as the petitioner has approached the court very late. On account of the implementation of Integrated Mandal Godowns and taking over of the stockiest point from private individuals through out Nalgonda District and entrusting the activity to the A. P. State Civil Supplies Corporation Ltd., the taluk level stockistship of the petitioner was dispensed with effect from 1985 and the petitioner was instructed to submit stock registers of rice, fertilizers, sugar, cement etc and commission bill, to Technical Assistant Grade III Kodad and to attend the office to get his accounts reconciled on account of corporation apprehending misappropriation of stocks at his level through lr.No.Accts.51(1)/87, dated. 14-9-1987. Pursuant to the said letter, the petitioner through his letter dated 7.10.1987 promised to handover the records in the 2nd week i.e., on or before 15/10/1987, but he failed to do so. Thereby through letter No.Accts.51(1)/87, dt. 4-12-1987 the petitioner was required to appear before the District

Manager within three days from the date of receipt of the letter stating that due to non-submission of records/ account the Corporation has sustained huge loss and failure to appear would be construed that the petitioner has willfully and intentionally misappropriated the stocks of the Corporation and the cost will be recovered under the Revenue Recovery Act. The said letter was received by the petitioner on 21.12.1987. Along with the counter, the 3rd respondent also enclosed Xerox copy of the acknowledgements. On receipt of the letter, the petitioner failed to attend, to get accounts reconciled with the Corporation and also failed to give reply up to 10.11.1988. Subsequently, the District Manager, vide Lr.No.Accts.51(1)87-88 dated 10-11-1988 requested the District Collector, Nalgonda to recover the cost of misappropriated stocks at double end and the consumer price amount at Rs.4,44,806-48 ps as per the records available on the District Manager's Office Nalgonda. Accordingly the District Collector through his letter No.B3/12490/89 dated 28.6.1989 directed the Mandal Revenue Officer to recover the amount of Rs.4,44,806-48 from the petitioner and in turn Mandal Revenue Officer issued memo No.CS/1735/89 dated 26.8.1989 to the petitioner to pay the amount within three days on the receipt of the memo. As the petitioner failed to pay, on 7.4.1994 the auction was conducted and the same was postponed on account of non-participation of the bidders. It is stated that the petitioner ought to have accounted for the extent of stocks received from the Corporation and the petitioner failed to do so. It is further stated that though the petitioner was given sufficient opportunity, as he failed to avail the opportunity, the proceedings under the Revenue Recovery Act were initiated. The petitioner has 1/3rd share in the joint family property as per the information given by Revenue Divisional Officer, Miryalguda through his D.O.Lr.No.J/1264/1993 dt. 6-3-1993 and the value of the same is approximately Rs.2,53,000/-. Along with the counter, the 3rd respondent has filed copies of the documents referred to in the counter affidavit.

4. The 5th respondent – Mandal Revenue Officer, Kodad Mandal, also filed counter and while denying the averments made by the petitioner in the writ petition with regard to violations of principles of natural justice, reiterated the averments made by the 3rd respondent in the counter affidavit. It is further stated that this respondent issued memo No.2/2880/92 dated 27.1.1992

along with demand notice for attachment and pursuant thereto, the petitioner executed an agreement dated 22.6.1992 undertaking to pay the entire amount as demanded on or before 30.6.1992. The petitioner also furnished security of another person by name P.Rama Murthy. Subsequently also this respondent made correspondence with the respondent no.3 in respect of the properties held by the petitioner and sureties submitted by the petitioner at the time of sanction of stocks. In the counter affidavit, the 5th respondent stated particulars with regard to publication of auction notice and gazette publication. With these averments, the 5th respondent also sought for dismissal of the writ petition.

5. From the above averments, the case of the petitioner is that by proceedings dated 23.11.1981 he was appointed as Taluq Stockiest by the third respondent – District Manager and that he paid the necessary security and he continued in that capacity till February, 1985. His case is that he filed the required registers with the respondents and the same were also accepted by them. But to his surprise i.e., after a lapse of seven years, memo no.C.S.No.E/2880/90 dated 27.1.1992 was issued by the 5th respondent – Mandal Revenue Officer, demanding payment of Rs.4,44,806-48 p.s., within a period of three days on account of certain corrupt practices. His further case is that he made a representation on 18.12.1992 to the 3rd respondent – District Manager stating that he was not having any stock of any commodity and that he may be furnished with necessary registers on the basis of which the liability was fixed, but the same was not complied with. His grievance is that without following the principles of natural justice, the notices were issued for payment of the amount. But in the counter affidavit filed by the 3rd respondent it is stated that the services of the petitioner were dispensed with on account of implementation of Integrated Mandal Godowns and taking over of the stockiest point from private individuals through out the Nalgonda District. It is stated that the petitioner was instructed to submit the stock registers of rice, fertilizers, sugar cement etc and commission bill to Technical Assistant Grade III Kodad and to attend the office to get his accounts reconciled with the Corporation accounts apprehending the mis-appropriation of the stocks at his level, through Lr.No.51(1)/87 dated 14.9.1987. Pursuant

thereto, the petitioner by his letter dated 7.10.1987 promised to handover the records in the District Manager's Officer in 2nd week i.e., on or before 15.10.1987. Along with the counter, the 3rd respondent also filed copy of the letter of the petitioner dated 7.10.1987 requesting time for submitting records. But, as already stated above, the case of the petitioner in the affidavit filed in support of the writ petition is that he filed the required registers with the respondents and the same were accepted. In the light of the statement of the 3rd respondent in the counter affidavit and also in view of the production of the copy of the letter dated 7.10.1987 said to have been made by the petitioner requesting time for submitting records, I am of the view that the statement of the petitioner appears to be not correct. As per the counter affidavit, as the petitioner failed to submit the records, the District Manager, A. P. State Civil Supplies Corporation Ltd again directed the petitioner through letter no.ACCts.51(1)/87 dated 4.12.1987 to appear before him within three days from the date of receipt of the letter and through the said letter, it was also informed to the petitioner that due to non-submission of records/accounts, the Corporation has sustained huge loss and thereby it was construed that the petitioner has willfully and intentionally misappropriated the stocks of the Corporation and the cost will be recovered under the Revenue Recovery Act. The said letter dated 4.12.1987 was received by the petitioner on 21.12.1987. Along with the counter, the 3rd respondent also produced copy of the acknowledgement signed by the petitioner and as the petitioner failed to comply with the letter till 10.11.1988, the 3rd respondent through letter dated 10.11.1988 requested the District Collector, Nalgonda to recover the value of the misappropriated stocks and the District Collector in turn directed the Mandal Revenue Officer to recover the amount and ultimately on 7.4.1994 auction was conducted. Further in the counter filed by the 5th respondent – Mandal Revenue Officer, at paragraph no.7 it is specifically stated that this respondent had issued a memo no2/2880/92 dated 27.1.1992 along with demand notice and pursuant to the said memo, the petitioner approached this respondent and executed an agreement dated 22.6.1992 by giving undertaking to pay the entire amount as demanded on or before 30.6.1992 and also furnished security of another person by name P.Rama Murthy and as the petitioner failed to stand on his

undertaking given on 22.6.1992, notice of attachment was issued on 21.4.1993 under Section 27 and the same was served on the petitioner on 28.4.1993. It is further stated that the same was intimated to the 2nd respondent vide letter no.E/3935/93 dated 29.10.1993 and the publication was made in the District Gazettee, fixing the date of auction on 7.4.1994. Denying these averments in the counters filed by the respondents, the petitioner has not filed any reply affidavit. Therefore, from the above averments made in the counter affidavits, it appears that the petitioner was given sufficient opportunity and he himself has given an undertaking on 22.6.1992 and also furnished surety and as he failed to abide by his undertaking, subsequent notices were given. In the counter affidavits the respondents have categorically stated that all the notices sent by them have been served on the petitioner and as he failed to avail the opportunity, ultimately proceedings under the Revenue Recovery Act was initiated.

6. The petitioner has filed a vague affidavit without any particulars and those particulars have been supplied by the respondents in their counters along with copies of the supporting documents. The petitioner in the writ affidavit stated that he continued as taluq stockiest up to February, 1985 and filed the required registers with the respondents and the same were also accepted by the respondents and to his surprise after a lapse of seven years, memo no.C.S.No.E/2880/90 dated 27.1.1992 was issued alleging that a sum of Rs.4,44,806-48 was due from him on account of certain alleged corrupt practices. As already stated above, the statement of the petitioner that he submitted the records and the same were accepted by the respondents appears to be not correct in the light of the averments made in the counter affidavit and also in view of his letter dated 7.10.1987, the copy of which also produced along with the counter of 3rd respondent. The petitioner has also not stated about the correspondence between him and the respondents after 1985 till 1992. These particulars have been submitted by the respondents and, therefore, contention that initiation of proceedings under the Revenue Recovery Act, are barred by limitation are factually incorrect and there is continuous correspondence between the petitioner and the respondents and the respondents also supplied full particulars and the 5th respondent in the counter affidavit also stated that the petitioner himself has given undertaking

on 22.6.1992 to pay the amount on or before 30.6.1992 and also furnished surety of another person by name P.Rama Murthy. As already stated above, the 3rd respondent along with the counter has produced copies of the acknowledgments signed by the petitioner and the letter addressed by the petitioner seeking time for production of records. Denying these averments, the petitioner has not filed any reply affidavit and the allegations made in the writ affidavit are vague and appears to have been stated to suit his convenience. Further in the light of the categorical statements made in the counter affidavits, it is clear that there are no violations of principles of natural justice and as the petitioners failed to avail the opportunity, proceedings under the Revenue Recovery Act were initiated.

7. For the foregoing reasons, I do not find any merit in the writ petition and the same is dismissed with costs of Rs.2,000/-.

AVS

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